

Decision \_\_\_\_\_

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

In the Matter of the Application of the City of San Clemente for an order authorizing the construction of five, permanent one-track at-grade crossings and three permanent one-track grade separated crossings and improvement of three existing crossings for the San Clemente Pedestrian Trail, known as the San Clemente Beach Safety Enhancement Project located on the Southern California Regional Rail Authority Orange Subdivision between railroad mile post 204.0 and 206.0 in the City of San Clemente, County of Orange, California.

Application 03-10-052  
(Filed October 27, 2003)

**OPINION APPROVING SETTLEMENT AND GRANTING APPLICATION****1. Summary**

This application, as modified by the settlement agreement filed April 6, 2004 (Settlement), proposes construction or improvement of six at-grade pedestrian crossings and four pedestrian undercrossings of the railroad track above the beach in the City of San Clemente (City). We find that the Settlement is reasonable in light of the whole record, consistent with law, and in the public interest, and approve it. The application, as modified, is granted. This proceeding is closed.

**2. Background**

In San Clemente, the beach is separated by a railroad track from the bluff on which the residential and commercial areas are located. The City estimates

that more than two million people cross the track to go to the beach and return every year. Currently, access across the railroad track to the beach is essentially uncontrolled. Beachgoers walk to the end of City streets, walk down the bluff on informal trails, walk along an informal trail along the track, and cross the track at virtually whatever point they choose. The process is reversed for return trips.

The City has been trying to develop a more regular trail and safer crossings for many years. A previous attempt failed to win City Council approval in early 1999. A new multi-year planning process, with the participation of representatives of many community groups, led to the development of the current application. The overall plan, the San Clemente Pedestrian Beach Trail (Trail), includes the at-grade crossings, undercrossings, and protective barriers identified in the application as the San Clemente Beach Safety Enhancement Project (Crossing Project), as well as design and construction of a formal pedestrian trail system.<sup>1</sup> Our jurisdiction is limited to the Crossing Project, and is exclusive as to it, pursuant to Pub. Util. Code § 1202.<sup>2</sup> As presented in the application, the Crossing Project would coordinate seven new or improved at-grade crossings<sup>3</sup> and four new or improved undercrossings<sup>4</sup>

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<sup>1</sup> Maps showing the general area and the specific crossing locations are attached as Appendix A.

<sup>2</sup> Unless otherwise indicated, all subsequent citations to sections refer to the Public Utilities Code, and citations to rules refer to the Rules of Practice and Procedure (Rules), which are codified at Chapter 1, Division 1 of Title 20 of the California Code of Regulations.

<sup>3</sup> Dije Court, proposed CPUC crossing number 101 OR-204.00-D; El Portal, proposed number 101 OR-204.10-D; Linda Lane, proposed number 101 OR-204.54-D; Corto Lane, existing number 101 OR-204.60-X, proposed number 101 OR-204.6-D; "T" Street restroom, proposed number 101 OR-205.20-D; Lost Winds, proposed number 101

*Footnote continued on next page*

with the Trail, channeling pedestrians to the approved crossings through the use of vegetative barriers and fencing. The Trail was approved by the City Council on June 3, 2003, at which time it also adopted a Mitigated Negative Declaration (MND) pursuant to the California Environmental Quality Act (CEQA), Pub. Res. Code §§ 21000 *et seq.*

### **3. Procedural History**

This application was filed by the City on October 27, 2003, and was published in the Daily Calendar on October 31, 2003. Timely protests were filed by the Burlington Northern and Santa Fe Railway Company (BNSF) and Commission staff. The late-filed protest of the State of California, Department of Transportation (CalTrans) was allowed by a Ruling of the Administrative Law Judge (ALJ) dated January 21, 2004.

A number of parties, in addition to the City and staff, participated actively in this proceeding. The Orange County Transportation Authority (OCTA) owns the tracks and the right of way; it has issued a license to the City for the Trail and Crossing Project. BNSF runs freight operations over the line, pursuant to operating rights it retained when it sold the property to OCTA. Southern California Regional Rail Authority, a five-county joint powers authority, runs the Metrolink commuter rail service on the line and performs necessary property and track maintenance for the commuter service. CalTrans is a partner with

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OR-205.60-D; and Calafia, existing number 101 OR-206.0-D. The Settlement eliminates the proposed new Linda Lane at-grade crossing.

<sup>4</sup> El Portal undercrossing, proposed number 101 OR-204.11-BD; Linda Lane undercrossing, proposed number 101 OR-204.49-BD; Montalvo undercrossing, proposed number 101 OR-205.9-BD; and Riviera underpass, existing number 101 OR-205.80-BX.

Amtrak in the operation of passenger trains over the line. The San Clemente Railroad Corridor Safety & Education Panel (RCSEP), formed to assess and report on solutions for pedestrian travel near the railroad tracks, developed a report that was the basis of the Trail design.

A prehearing conference (PHC) was held on February 6, 2004. At the urging of the City, the parties undertook immediate settlement discussions. The Assigned Commissioner held an all-party meeting at the Commission's offices in Los Angeles on February 19, 2004. The parties also held a settlement meeting among themselves. The parties had two sessions with an ALJ mediator, in San Clemente on March 15, 2004, and in San Francisco on March 24, 2004.

A second PHC was held on March 30, 2004. The City represented that all parties except CalTrans had come to a settlement in principle of all issues in this proceeding. The parties agreed on a schedule for the remainder of this proceeding that was intended to allow us to consider the proposed settlement in time for the City to meet a deadline of June 30, 2004 for a funding commitment for the Crossing Project. The City, on behalf of the parties joining in the Settlement, filed a motion for approval of the Settlement on April 6, 2004.<sup>5</sup> The City, CalTrans, and Commission staff filed timely comments. The City filed timely reply comments. On April 28, 2004, CalTrans withdrew its protest. Since all remaining active parties are parties to the Settlement, this matter is now uncontested.

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<sup>5</sup> A copy of the settlement agreement is attached as Appendix B.

## 4. Discussion

### 4.1. The Proposed Settlement

The Crossing Project, by linking to an official pedestrian trail, creating a limited number of at-grade pedestrian crossings, and including a variety of measures and barriers to keep pedestrians within the appropriate areas, would make the approximately two-mile stretch of railroad track near the beach in San Clemente significantly safer for pedestrians than it is now. The Settlement has added a number of safety enhancements and enforcement requirements to the original application, improving the potential effectiveness of the Crossing Project.<sup>6</sup> Some of the more important features of the Crossing Project, as modified by the Settlement, include:

- Permanent closure of two at-grade crossings (Settlement);
- Use of CPUC Standard No. 9 warning devices with crossing arms on both sides of the tracks at all at-grade crossings (Settlement);
- Construction of stairs leading from the crossing at Calafia to the beach in the first phase of the Crossing Project (Application, modified by Settlement);<sup>7</sup>
- Improved landing areas for pedestrians (Settlement);
- Extensive fencing at least four feet high, with the option of extension to four feet, five inches in height, and guardrails at least 42 inches high (Application, modified by Settlement);

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<sup>6</sup> In a separate agreement with CalTrans, the City undertook aggressive safety education, monitoring, and reporting efforts, in addition to agreeing to additional safety improvements and evaluation procedures. This agreement is outside the scope of the Settlement we approve today.

<sup>7</sup> The stairs were required by Decision 89-08-025 but have not yet been constructed.

- Removal of vegetation to improve train operator sight lines (Settlement);
- Installation of informational and warning signs in both English and Spanish throughout the Crossing Project and on the beach (Settlement);
- Increased enforcement by the City of ordinances against trespassing, with annual reports to the Consumer Protection and Safety Division (Settlement).

The Crossing Project has widespread support. We received letters of support for the application, prior to its modification by the Settlement, from four government agencies,<sup>8</sup> nine civic organizations,<sup>9</sup> and one elected official.<sup>10</sup> The support letters emphasize the need to combine access to the beach, a more regular trail design, and increased safety of pedestrian crossings leading to the beach.

In accordance with our responsibilities under Rule 51.1(e), we conclude that the Settlement is reasonable in light of the whole record, consistent with law, and in the public interest. Although no testimony was distributed, the application, PHC statements, comments, reply comments, and information supplied at the PHCs document the dangerous existing conditions at the San Clemente beach access crossings and amply support the safety improvements

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<sup>8</sup> California Coastal Conservancy, California Department of Parks and Recreation, Orange County Public Facilities & Resources Department, and OCTA.

<sup>9</sup> Coastwalk; Endangered Habitats League; Rails to Trails Conservancy; ReStore the Shore; San Clemente Chamber of Commerce; San Clemente Friends of the Beaches, Parks and Recreation Foundation; San Clemente RCSEP; San Clemente Surf Lifesaving Association; and Soroptimist International of Capistrano Bay.

<sup>10</sup> Thomas Wilson, Chairman, Orange County Board of Supervisors.

proposed in the Settlement. The Settlement, by requiring use of Standard No. 9 warning devices, has eliminated questions about whether the warning devices initially proposed for the at-grade crossings would comply with General Order 75-C. The public interest is served by the Settlement, which preserves public access to San Clemente beaches while reducing safety hazards associated with numerous unprotected or under-protected at-grade pedestrian crossings of the railroad track on the way to the beach.

We note that, as provided in Rule 51.8, the Settlement we adopt today is binding on all parties to this proceeding. It does not, however, constitute approval of, or precedent regarding, any principle or issue in this proceeding or in any future proceeding.

#### **4.2. CEQA Review**

The City is the lead agency for the Trail, including the Crossing Project, under CEQA. On June 3, 2003, the City approved the Trail, including the Crossing Project, and adopted the MND. The Commission is a CEQA responsible agency, as defined in Pub. Res. Code § 21069, for the Crossing Project. To comply with CEQA, a responsible agency must consider the lead agency's Environmental Impact Report or Negative Declaration prior to acting upon or approving the project. (CEQA Guidelines, §§ 15050, 15096.) We find the MND prepared by the City adequate for our decision-making purposes. Accordingly we also find that the Crossing Project will not have a significant impact on the environment.

#### **5. Comments on Draft Decision**

This is now an uncontested matter in which the decision grants the relief requested. Pursuant to Pub. Util. Code § 311(g)(2), the otherwise applicable 30-day period for public review and comment is waived.

## **6. Assignment of Proceeding**

Geoffrey F. Brown is the Assigned Commissioner and Anne E. Simon is the assigned ALJ in this proceeding.

### **Findings of Fact**

1. Notice of the application was published in the Commission Daily Calendar on October 31, 2003.
2. BNSF filed a timely protest to the application on November 26, 2003.
3. Commission staff filed a timely protest to the application on December 1, 2003.
4. CalTrans was allowed to file a late protest to the application by ALJ Ruling dated January 21, 2004.
5. CalTrans withdrew its protest on April 28, 2004.
6. All active parties in this proceeding are parties to the Settlement, filed April 6, 2004.
7. This application is uncontested.
8. The proposed new at-grade pedestrian crossing at Dije Court, City of San Clemente, Orange County is identified as PUC Crossing No. 101 OR-204.00-D.
9. The proposed new at-grade pedestrian crossing at El Portal, City of San Clemente, Orange County is identified as PUC Crossing No. 101 OR-204.10-D.
10. The proposed new at-grade pedestrian crossing at "T" Street, City of San Clemente, Orange County is identified as PUC Crossing No. 101 OR-205.20-D.
11. The proposed new at-grade pedestrian crossing at Lost Winds, City of San Clemente, Orange County is identified as PUC Crossing No. 101 OR-205.60-D.
12. The existing at-grade pedestrian crossing at Corto Lane, City of San Clemente, Orange County is identified as PUC Crossing No. 101 OR-204.6-D.



13. The existing at-grade pedestrian crossing at Calafia, City of San Clemente, Orange County is identified as PUC Crossing No. 101 OR-206.0-D.

14. The proposed new pedestrian undercrossing at El Portal, City of San Clemente, Orange County is identified as PUC Crossing No. 101 OR-204.11-BD.

15. The proposed new pedestrian undercrossing at Linda Lane, City of San Clemente, Orange County is identified as PUC Crossing No. 101 OR-204.49-BD.

16. The proposed new pedestrian undercrossing at Montalvo, City of San Clemente, Orange County is identified as PUC Crossing No. 101 OR-205.9-BD.

17. The existing pedestrian undercrossing at Riviera, City of San Clemente, Orange County is identified as PUC Crossing No. 101 OR-205.80-BX.

18. Public convenience, safety, and necessity require the construction of the four new at-grade pedestrian-rail crossings and three new pedestrian undercrossings, as well as the improvement of the two existing at-grade crossings and the existing undercrossing.

19. The City is the CEQA lead agency for the Crossing Project.

20. The Commission is a responsible agency for the Crossing Project under CEQA.

21. On June 3, 2003, the City adopted an MND for the Trail, including the Crossing Project.

22. The Commission reviewed and considered the City's environmental documentation.

23. The City's environmental documentation is adequate for our decision-making purposes.

24. The provisions of the Settlement are reasonable in light of the whole record in this proceeding.

25. The provisions of the Settlement are in the public interest.

**Conclusions of Law**

1. The application is uncontested and a public hearing is not necessary.
2. The Settlement was proposed after the second PHC in this proceeding, in accordance with Rule 51.2.
3. Consistent with Rule 51.1(e), the Settlement is reasonable in light of the whole record, consistent with law, and in the public interest, and should be adopted.
4. Public convenience, safety, and necessity require the construction of four new at-grade pedestrian-rail crossings and three new pedestrian undercrossings, and the improvement of two existing pedestrian-rail crossings and one existing pedestrian undercrossing on the OCTA rail track in San Clemente.
5. The MND adopted by the City as the documentation required by CEQA for the Crossing Project is adequate for our decision-making purposes.
6. We adopt the City's MND finding that the Crossing Project will not have a significant impact on the environment.
7. The application, as modified by the Settlement, should be granted as set forth in the following order.
8. In order to allow construction to proceed expeditiously, this order should be effective immediately.

**O R D E R**

**IT IS ORDERED** that:

1. The City of San Clemente (City) is authorized to construct a new at-grade pedestrian crossing at Dije Court, City of San Clemente, Orange County, identified as PUC Crossing No. 101 OR-204.00-D.

2. The City is authorized to construct a new at-grade pedestrian crossing at El Portal, City of San Clemente, Orange County, identified as PUC Crossing No. 101 OR-204.10-D.

3. The City is authorized to construct a new at-grade pedestrian crossing at “T” Street, City of San Clemente, Orange County, identified as PUC Crossing No. 101 OR-205.20-D.

4. The City is authorized to construct a new at-grade pedestrian crossing at Lost Winds, City of San Clemente, Orange County, identified as PUC Crossing No. 101 OR-205.60-D.

5. The City is authorized to construct improvements at the existing at-grade pedestrian crossing at Corto Lane, City of San Clemente, Orange County, identified as PUC Crossing No. 101 OR-204.6-D.

6. The City is authorized to construct improvements at the existing at-grade pedestrian crossing at Calafia, City of San Clemente, Orange County, identified as PUC Crossing No. 101 OR-206.0-D.

7. At all at-grade crossings, Standard No. 9 signals with crossing arms shall be installed on both sides of the tracks.

8. The City is authorized to construct a new pedestrian undercrossing at El Portal, City of San Clemente, Orange County, identified as PUC Crossing No. 101 OR-204.11-BD.

9. The City is authorized to construct a new pedestrian undercrossing at Linda Lane, City of San Clemente, Orange County is identified as PUC Crossing No. 101 OR-204.49-BD.

10. The City is authorized to construct a new pedestrian undercrossing at Montalvo, City of San Clemente, Orange County, identified as PUC Crossing No. 101 OR-205.9-BD.

11. The City is authorized to construct improvements at the existing pedestrian undercrossing at Riviera, City of San Clemente, Orange County, identified as PUC Crossing No. 101 OR-205.80-BX.

12. The City shall construct fences, guardrails, vegetation planting, and other barriers as specified in the application filed October 27, 2003, as modified by the settlement agreement (Settlement) filed April 6, 2004.

13. The City shall install appropriate warning and informational signs as specified in the application filed October 27, 2003, as modified by the Settlement. Signs shall be placed so as not to block visibility of warning devices.

14. The City shall report annually to the Consumer Protection and Safety Division (CPSD) regarding pedestrian compliance and the City's enforcement activities, as specified in the Settlement.

15. The construction authorized by this order shall be as described in the application filed October 27, 2003, as modified by the Settlement.

16. Clearances shall be in accordance with General Order (GO) 26-D.

17. Walkways shall conform to GO 118. Walkways adjacent to any trackage subject to rail operations shall be maintained free of obstructions and shall be promptly restored to their original condition in the event of damage during construction.

18. Prior to construction, the City shall file final construction plans with CPSD's Rail Crossings Engineering Section (RCES).

19. Within 30 days after completion of the work in each phase specified by the Settlement, the City shall notify RCES in writing, by submitting a completed standard Commission Form G (Report of Changes at Highway Grade Crossings and Separations), that the authorized work is completed.

20. This authorization shall expire if not exercised within two years unless the time is extended.

21. This authorization shall expire if the above conditions are not complied with.

22. This authorization may be revoked or modified if public convenience, necessity, or safety so requires.

23. This application is granted as set forth above.

24. Application 03-10-052 is closed.

This order is effective today.

Dated \_\_\_\_\_, at San Francisco, California.

**APPENDIX A**  
**EXHIBIT A-1**